IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

S.B.CRIMINAL MISC. PETITION NO. 1431/06
(Mangi Lal Vs. State of Rajasthan & Anr.)

Date of Order : 12/12/2006

**PRESENT**

**HON'BLE MR. JUSTICE H.R.PANWAR**

Mr. Suresh Kumbhat for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. D.K.Gaur for the non-petitioner No.2.

**BY THE COURT**:-

By the instant petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 2.5.2005 passed by Additional Chief Judicial Magistrate No.2, Udaipur (for short 'the trial court' hereinafter) whereby on filing the FR by the police, the trial court directed the police to further investigate the matter under sub-section (8) of Section 173 Cr.P.C.

I have heard learned counsel for the parties. Carefully gone through the order impugned.

The further investigation is permissible under sub-section (8) of Section 173 Cr.P.C. which empowers the police to further investigate the matter. Sub-section (8) of Section 173 Cr.P.C. provides that nothing in this section shall be deemed to preclude further investigation in respect of offence after a report

under sub-section (2) has been forwarded to the Magistrate and where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate, a further report or reports regarding such evidence in the form prescribed: and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

Learned counsel for the petitioner submits that while sending the matter for further investigation, the trial court has formulated certain points and given direction to investigate on those points and therefore, the order impugned to the extent of giving direction to investigate the matter in a particular manner, is without jurisdiction. Learned counsel for the petitioner has relied on a decision of Hon'ble Supreme Court in Popular Muthiah Vs. State represented by Inspector of Police, (2006) 3 SCC (Cri) 245.

It appears from the order impugned that certain lapses in the investigation conducted have been noticed by the trial court. The trial court could have sent the matter for further investigation without there being any direction to investigate the matter in a particular direction and the manner in which the matter is to be re-investigated. The investigation is within the domain of the police.

In Popular Muthiah Vs. State represented by Inspector of Police (supra) Hon'ble Supreme Court held as under:-

> "The High Court while passing the impugned judgment did not bear the said principles in mind. It went beyond its jurisdiction in directing the prosecution of the appellant before us. In a case of this nature, where a superior court exercises its inherent jurisdiction, it indisputably should remind itself about the inherent danger in taking away the right of an accused. The High Court should have been circumspect in exercising the said jurisdiction. When a power under sub-section (8) of Section 173 of the Code of Criminal Procedure is exercised, the court ordinarily should not interfere with the statutory power of the investigating agency. It cannot issue direction to investigate the case from a particular angle or by a particular agency."

In the circumstances, therefore, the order impugned to the extent of directing the investigating officer to investigate the matter in a particular line cannot be sustained.

In this view of the matter, the order impugned dated 2.5.2005 passed by the trial court is modified to the extent that the Investigating Officer shall further investigate the matter and file report before the trial court without being influenced by any direction made in the order impugned.

With this modification, the petition stands disposed of. Interim stay order dated 10.11.2006 stands vacated.

**(H.R.PANWAR),J.**

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